

**HEARING OFFICER, CAREER SERVICE BOARD  
CITY AND COUNTY OF DENVER, COLORADO**  
Appeal No. 08-11

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**ORDER DISMISSING APPEAL**

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IN THE MATTER OF THE APPEAL OF:

**ERIC L. HALL**, Appellant,

vs.

**DEPARTMENT OF SAFETY, DENVER SHERIFF'S DEPARTMENT,**  
and the City and County of Denver, a municipal corporation, Agency.

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The Appellant was ordered to show cause why this appeal should not be dismissed for lack of jurisdiction. The Appellant and the Agency filed timely responses. Having considered the responses, the file, and pertinent authority, I now find and order as follows.

The present issue is whether the Appellant's appeal was untimely and thereby deprived the Hearings Office of jurisdiction to consider the disputed facts of the case. Career Service Rule (CSR) 18-40 B. 2., provides "an employee must deliver the grievance to the department or agency designee within fifteen (15) calendar days after notification of the action or inaction which gives rise to the grievance." The term "notification of the action or inaction" is subsequently defined as "the date the employee knew or should have known of the action or inaction." CSR 18-40 D. 1. (emphasis added).

Appellant acknowledged he first learned of the Agency's allegedly improper action – its miscalculation of his benefits – in 1998, but claims each pay period triggers a new 15-day appeal. Appellant supports this claim, in turn by reference to Fleck v. State ex. rel. Oklahoma Dept. of Corrections, 888 P.2d 532 535 (Okla. App. 1994), a case which is inapplicable because it interpreted the Fair Labor Standards Act (FLSA) in holding the statute of limitations in such actions is tolled when equitable estoppel is invoked where the employer's misrepresentation caused the employee's misunderstanding of the time bar. Such circumstances, even if the FLSA were applicable, were not present here. Moreover, the Fleck court, citing Hill v. City of Greenville, Texas, 696 F. Supp. 1123 (D. Tex. 1988), stated Fleck misperceived the use of the term "continuing violation." The court explained if a discriminatory action were not corrected after a new provision in the FLSA added a new protected class of employee, an employer would be liable to such newly-protected member after the amendment even if no new discriminatory action occurred. Appellant's argument here is just the opposite: that each new pay period was a continuous or new cause of action under the 15-day rule, [Appellant's response @ ¶¶ 6,8].

In addition to the inapplicability of the FLSA scheme to the Career Service Rules, Fleck is factually inapt.

Next, Appellant's claim that he "became aware" of the Agency's violation on January 15, 2011 impermissibly stretches the plain meaning of the term. This is particularly true as Appellant acknowledged the Agency's allegedly impermissible action occurred in 1998. [Appellant's Response @ ¶16].

Finally, Appellant requests that, even if jurisdiction is absent for the period before his appeal, that jurisdiction inure for all pay periods from the date of his appeal forward. I decline Appellant's invitation to create a continuous or springing jurisdiction where the Career Service Rules neither permit nor infer such possibilities.

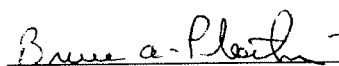
Appellant's remaining claims, such as his alleged "continuous employment" as a Career Service Employee, while disputed, are time-barred by his failure to file his grievance timely under CSR 18-40 B. 2. Consequently I am left without jurisdiction to consider the merits of his disputed claims.

Finally, Appellant's claims are barred because he has or could have raised them in previous proceedings which were conclusively decided against him. Appellant stated he sought, unsuccessfully, to have his date of hire reinstated to 1991 when he was rehired in 1998; and he renewed his request by grievance and appeal in 2002.

ORDER

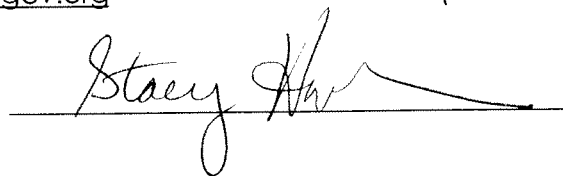
For reasons stated above, Appellant's appeal is DISMISSED WITH PREJUDICE.

DONE March 9, 2011.

  
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Bruce A. Plotkin  
Career Service Hearing Officer

I certify that, on March <sup>10</sup>~~9~~, 2011, I delivered a correct copy of this Order to the following, in the manner indicated:

Mr. Eric Hall, [lynndalehall@aol.com](mailto:lynndalehall@aol.com) (via email);  
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